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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

A. L. MICHILING BARGE LINES, INC., ET AL.

Plaintiffs-Appellants,

v.

**UNITED STATES OF AMERICA and INTERSTATE
COMMERCE COMMISSION,**

Defendants-Appellees.

BOARD OF TRADE OF CITY OF CHICAGO,

Appellant,

v.

**UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, and THE NEW YORK CENTRAL RAILROAD
COMPANY, ET AL.**

Appellees.

On Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM

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Dated: March 5, 1963.

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IN THE
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No. 746

A. L. MECHLING BARGE LINES, INC., ET AL.
Plaintiffs-Appellants,

**UNITED STATES OF AMERICA and INTERSTATE
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Defendants-Appellees.

No. 747

BOARD OF TRADE OF CITY OF CHICAGO,
Appellant,

**UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, and THE NEW YORK CENTRAL RAILROAD
COMPANY, ET AL.**

Appellees.

**On Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.**

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, The New York Central Railroad Company, an applicant in the proceeding before the Interstate Commerce Commission (sometimes hereinafter referred to as the "Commission")¹, and an intervenor-as-defendant in the Court proceeding below, moves that the judgment of the District Court be affirmed.

¹ Likewise the Interstate Commerce Act (49 U.S.C., National Transportation Policy [Preceding Sections 1, 301, 901, 1001], §§1, *et seq.*, is sometimes hereinafter referred to as the "Act".)

STATEMENT

This case involves the validity of an order of the Interstate Commerce Commission in Fourth Section Application No. 33955, *Corn and Corn Products, Illinois to Official Territory*, 310 I.C.C. 437, petitions for reconsideration denied by entire Commission November 18, 1960. The order was entered after hearing² in which the Commission authorized railroads to depart from the long and short haul provision of Section 4 of the Interstate Commerce Act. The Commission's notice of hearing issued October 16, 1957, and setting the matter for hearing on December 4, 1957, specifically stated that the hearing would be held on the railroads' Fourth Section Application No. 33955. A copy of the notice of hearing is attached hereto as Appendix A. On four prior occasions, in August 1957, the Commission notified Appellants that the lawfulness of the rates under other sections of the Act would be determined by the Commission in an investigation if a complaint were filed in accordance with the Commission's Rules of Practice. Copies of these notices are attached as Appendix B. Appellants did not file complaints assailing the lawfulness of the rates pursuant to the Commission's rules and the Commission's advice as to their rights. If Appellants had filed such complaints prior to the hearing they would have been consolidated for hearing and determination with the railroads' fourth section application as it is the Commission's policy to determine all issues in one proceeding if those issues are prop-

² As the fourth section order assailed here was entered after notice, hearing and oral argument, and is based on findings, the questions involved in *A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961) are not present here.

erly raised. *Mississippi Railroad Commission v. Alabama V. Ry. Co.*, 120 I.C.C. 569, 573 (1927). The fourth section order assailed here includes the following provision that for many years has been included in all fourth section orders entered by the Commission:²

"The Commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provisions of the Interstate Commerce Act."

The fourth section application was filed to enable The New York Central Railroad Company to maintain rates that would permit the rail movement of corn from stations in northern Illinois located on its Kankakee Belt Line west of Kankakee, Ill., to destinations in the east in competition with the barge-rail route via the Illinois River to Chicago, Ill., and at the same time avoid reducing rates and revenues on corn originated at intermediate origins east of Kankakee at which there was no competition. This situation, namely the meeting of the competition of other carriers for particular traffic, most frequently is the basis for the granting of fourth section relief. Such relief has the effect of enabling applicants to compete with other carriers while leaving the rate structure basically unaltered.

Prior to the publication of competitive rates corn was trucked from farms adjacent to the line of the New York Central west of Kankakee to river elevators and Central's Line was left almost barren of traffic and revenues. The record before the Commission contained evidence of the barge movement of corn via the Illinois River to Chicago

² See the Commission order quoted in *Intermountain Rate Cases*, 234, U.S. 476, 493 (1914).

and rail shipments of corn from the Kankakee Belt stations involved both prior and subsequent to the publication of the competitive rates on December 15, 1956. The following table shows the movement figures:

	<u>Barge Receipts At Chicago (Bushels)</u>	<u>Barge Shipments From 10 Competitive Ports to Chicago¹ (Bushels)</u>	<u>Rail Shipments From Kankakee Belt Stations (Bushels)</u>
1935	723,000	Not Available	Not Available
1937	2,019,000	Not Available	Not Available
1940	16,266,000	Not Available	Not Available
1956	26,210,000	24,647,000 ²	926,000
1957	34,199,000	27,833,000 ³	5,362,000

The rail movement during 1956 was almost entirely corn for export that moved on rates that were lower than the through rates involved here. More than 1,000,000 of the 5,362,000 bushels shipped by rail in 1957 moved on the lower export rates. The barge lines remained the overwhelmingly dominant factor in the movement of corn from the Kankakee Belt Territory after the competitive rates became effective. By the ultimate test of the competitive effect of the rates, as well as other evidence on the competitive issue, the Commission found that the rates are not lower than necessary to meet barge competition (310 L.C.C. at p. 452).

¹ The 10 ports on the Illinois River that are competitive with the Kankakee Belt are Lockport, Joliet, Morris, Seneca, Ottawa, LaSalle, Spring Valley, Hennepin, Henry and Lacon.

² 11 month period December 15, 1955 to November 11, 1956 projected on an annual basis.

³ 11 month period December 15, 1956 to November 11, 1957, projected on an annual basis.

As the river route to Chicago had a practical monopoly on the movement of corn from the origin area west of Kankakee, it was only to be expected that, even though the reduced rates could be used on rail movements via Chicago, appellants as parties interested in the barge route would oppose competitive efforts which permitted the corn to move via all-rail routes. The establishment of all-rail rates competitive with the barge-rail rates permitted buyers of corn for shipment by rail to compete with river buyers for the purchase of corn. The Commission found that the bidding competition made possible by the competitive rail rates benefited the farmer through higher prices (310 I.C.C. at 442).

Grain and grain products move on a system of combinations either of flat⁷ rates to reshipping points plus proportional rates beyond to destination, or of proportional rates to reshipping points plus proportional rates⁸ beyond to destination.

Inasmuch as the proportional rates from both Chicago and Kankakee to the east are identical, the New York Central elected to meet the competition of the barge-rail route by establishing a proportional rate factor to Kankakee competitive with the barge rates to Chicago. Thus the combinations of the proportional rail rates via Kankakee would be competitive with the combinations of the barge rates to Chicago plus the proportional rail rates beyond. No change was made in the proportional rates from either Kankakee or Chicago.

⁷ A flat rate is one of unrestricted application and is not dependent on prior or subsequent transportation.

⁸ A proportional rate is of restricted application applicable only on traffic having prior or subsequent transportation and is only a portion of the total transportation charges.

As the flat rates from both Kankakee and Chicago to eastern destinations are the same and are higher than the combination of the barge rate to Chicago and the proportional rate from Chicago to the same destinations, the permissive fourth section relief granted by the Commission in respect to the Kankakee combinations authorizes the same departures from the long-and-short haul provision of the Act as exist in connection with the barge-rail combination rates over Chicago.

The rate application is as follows. In the first instance the corn is moved from origin stations on the New York Central west of Kankakee to Kankakee, Chicago, Paris, or Danville, Illinois; Indianapolis, Indiana; or other transit points under higher flat rates. After milling in transit and reshipment of corn products, the inbound charges are readjusted on the basis of the combination of the proportional factor to Kankakee and the proportional rates on grain products from Kankakee, and the credit is applied to the outbound movement of corn products. The Commission found that the 6 cent proportional factor from stations west of Kankakee to Kankakee "has no independent application but is an integral part of the rate which applies on the through transportation from origin to delivery of corn products at ultimate destination", and that "it is only by application of the through combination that the fourth-section departures subject of this proceeding are created." (310 I.C.C. at p. 450). Its only function is the determination of the through charges.

The Chicago Board of Trade, (J.S., p. 6) presents a series of charts to show the rate application from Streator, Ill. to New York, N.Y. The New York Central had no movement of corn from Streator during the years 1954-1956. Thus the 72.5 cent rate applicable prior to December 15, 1956 was of no practical significance. It should be

recognized that Charts II and III do not show the combination of the barge-rail rates via Chicago. The barge rate to Chicago was 4.625 cents on December 15, 1956 (310 I.C.C. at 440) which, when added to the reshipping rate of 49.5 cents from Chicago to New York, produced total charges of 54.125 cents per hundred pounds via the barge-rail route over Chicago as contrasted with the 54.5 cent rail-combination via Kankakee. Moreover, the rail combination over Kankakee applies via Chicago and corn moving on that combination can be stored in transit or milled in transit at Chicago or stations east thereof enroute to final destination.

The Commission granted the railroads' fourth section application by order entered June 8, 1960, its ultimate finding being:

"We find, upon the record herein, that applicants have shown a special case within the meaning of section 4 of the Act, by virtue of actual and compelling competition; that the proposed rates are not lower than necessary to meet that competition, do not constitute a destructive competitive practice, are reasonably compensatory, and will not impose an undue burden on other traffic; and that the relief sought would not be disharmonious with the other provisions of the act, would be in the public interest, and is justified. (310 I.C.C. 452)"

The court below unanimously concluded that the order was within the statutory power of the Commission, that it is supported by findings and conclusions based on substantial evidence, and that no prejudicial error occurred in the hearings before the Examiner and the Commission. Appellants' complaint to enjoin the Commission's fourth-section order was dismissed. The opinion of the District Court is reported at 209 F. Supp. 744.

ARGUMENT.

This appeal presents no substantial question warranting plenary consideration by this Court. The Commission's fourth-section order in question was entered after notice and hearing and is based on findings. No question is raised as to the fairness of the hearing in respect to the fourth-section issues presented by the railroads' application. Rather, the questions presented fall into three categories: (1) Did the Commission correctly determine that the charges were compensatory as required by Section 4 of the Act? (Mechling J.S., pp. 3-4, questions 1-3); (2) Must the Commission make a final determination in respect to the lawfulness of the rates under other sections of the Act in a hearing limited to the railroads' fourth-section application? (Mechling J.S., p. 4, question 4; Board of Trade J.S., p. 3); and (3) Was the Commission's ultimate finding based on requisite findings supported by substantial evidence? (Mechling J.S., p. 4, question 5).

(1) The correctness of the Commission's basic determination of the compensatory issue on consideration of the through or aggregate charges from origins west of Kankakee to destinations in the East is clear from the language of Section 4 of the Act⁹ and the cases cited by

⁹ "It shall be unlawful for any common carrier subject to this part or part III to charge * * * any greater compensation in the aggregate for the transportation * * * for a shorter than for a longer distance * * * Provided, That * * * carrier(s) * * * may be authorized by the Commission to charge less for longer than for shorter distances * * * but * * * the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; * * *"

the District Court. The statute plainly refers to "greater compensation in the aggregate" and "any charge to or from the more distant point." There was no challenge as to the compensativeness of the through charges from origin to destination. The Commission found that the through charges involved were on a higher level than export rates on corn from the same origins to New York, and on a higher level than other grain rates with which they were compared, (310 I.C.C. at 448); and further found that by handling traffic on the proposed through rates New York Central's revenues are increased by 7.5 cents per hundred pounds and its expenses are reduced by reason of the less expensive handling of corn from stations west of Kankakee than from Chicago (310 I.C.C. at 449). The Commission also found that the rates are not lower than necessary to meet the barge competition (310 I.C.C. at 449) and finally found that, "The rate and revenue comparisons and cost-saving evidence submitted by the New York Central and its supporters established the compensativeness of the proposed rates." (310 I.C.C. at 452). These findings, based on substantial evidence, fully meet the time-honored definition of a reasonably compensatory rate set forth in *Transcontinental Cases of 1922*, 74 I.C.C. 48, 71, which was quoted by the Court below. There is no basis for Mechling's assertions that the rates are non-compensatory as required by Section 4 or that the competitive portion of the rate is subsidized by a non-competitive portion of the rate. The Commission specifically found to the contrary (310 I.C.C. 448-449).

(2) That the Commission is not required to make a final determination in respect to the lawfulness of the rates under other sections of the Act in a hearing limited, as this

one was, to the railroads' fourth section application was decided by this Court in *United States v. Merchants & Manufacturers Traffic Association*, 242 U.S. 178 (1916). In that case the Commission had granted fourth section authority. Hearings were held. Thereafter, certain intermediate cities contended that the order was invalid because they had not been heard in the proceedings in which the orders had been entered. This Court stated at 188:

"* * * For the order is permissive merely. The carrier is the only necessary party to the proceeding under §4. The Commission represents the public. While it is proper and customary for communities or shippers interested to participate in hearings held, there is no provision for notice to them. They are not bound by the order entered; at least in the absence of such participation. And if the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, §§13 and 15 afford ample remedy."

This Court in the *Merchants and Manufacturers* case recognized the distinction between the determination of the issues on a fourth section application and a final determination of the lawfulness of the rates filed in conformance with the order. Appellant Board of Trade's distinction of that case on the ground that plaintiffs there were not parties to that Commission proceeding misses the point of that holding. See also *Seatrains Lines, Inc., v. United States*, 168 F.Supp. 819 (N.D. N.Y. 1958) where the Court held at 824:

"The only questions presented for investigation by the Commission under Section 4 are whether there is a 'special case' and whether the proposed rates are 'reasonably compensatory.'"

"However, Section 4 does not contemplate that there shall be a determination in a Section 4 proceeding as to whether the rates charged are unduly discriminatory against a competing water carrier. This question must be raised by proceedings under Sections 13 and 15 of the Interstate Commerce Act. In such proceedings a hearing must be held at which all parties affected, carriers, shippers and communities, can be heard and their respective interests appropriately weighed and balanced by the Commission." (p. 824)

The Board of Trade attempts to distinguish *Koppers Company v. United States*, 132 F. Supp. 159 (W.D. Pa., 1955) and *Florida Citrus Commission v. United States*, 144 F. Supp. 517, 526 (N.D. Fla., 1956) on the ground that those cases were general revenue increase cases which did not involve Section 4 of the Act. As a matter of fact, the Commission's order assailed in the *Koppers* case did modify outstanding fourth section orders so as to permit the railroads to increase rates. However, the real significance of these cases is that there, as here, the Commission's orders did not require or approve the rate action taken by the railroads, but permitted rate changes without making an ultimate determination of the lawfulness of the rates under all sections of the Act. As here, the Courts in each of those cases cited and followed the precedent of this Court in *United States v. Merchants & Manufacturers Traffic Association*, *supra*.

Intermountain Rate Cases, 234 U.S. 476 (1914), cited by appellants and decided prior to *United States v. Merchants & Manufacturers Traffic Assn.*, *supra*, does not deal with the question presented here. In that case this Court interpreted Section 4 as amended in 1910, held that it was constitutional, and held that orders of the Commission entered thereunder were reviewable. This Court's discussion of "The meaning of the Statute" at pages 480-

486, makes it clear that its reference to "the preference and discrimination clauses of the second and third section" of the act was to discrimination against or prejudice to intermediate short haul shippers who would be adversely affected by lower long haul rates. At pages 482-483 of that opinion, this court pointed out " * * that where within the purview of the fourth section it had lawfully resulted that the lesser rate was charged for a longer than for a shorter haul, such exaction being authorized could not be preference or discrimination and therefore illegal." Thus, while that case requires the Commission to find that a special case exists to excuse what otherwise would be discrimination or prejudice to the intermediate short haul shippers, it does not require the Commission to make a final and ultimate determination of the lawfulness of the rates under other sections of the Act. Here the Commission found that a special case exists by virtue of actual and compelling competition and that the proposed rates are not lower than necessary to meet competition (310 I.C.C. at 452); that on the record there is no indication of undue damage to Chicago (310 I.C.C. at 451); and that shifting some of the Belt corn from barge to rail would not alter the competitive relationship at eastern markets between Belt corn and corn grown near Indiana stations intermediate from Kankakee to eastern destinations (310 I.C.C. at 444). Thus the Commission's findings fully conform to the interpretation of Section 4 in *Intermountain Rate Cases, supra*.

Neither the Commission nor the court below held that the Commission is excused from taking cognizance of the national transportation policy and applying the act as a whole as required by *American Trucking Assns. Inc. v.*

United States, 355 U.S. 141 (1957). The Commission's report is replete with discussion of the evidence and contentions of the parties and includes the finding that in this instance the railroads' efforts to secure traffic do not amount to a destructive competitive practice (310 I.C.C. at 451). However, the requirement that the Commission administer the Act consistent with the National Transportation Policy does not demand that the Commission modify its procedures and make specific ultimate findings under sections of the Act other than those under which the proceeding is held.

Appellants argue that the Commission changed its procedures in this case and cite sixteen Commission reports.¹⁰ However, in only two isolated reports was relief denied because other sections of the Act were found to be violated. Those reports, the latest of which was decided in 1939, were by a division of the Commission from which no petition for reconsideration by the entire Commission was filed.¹¹ The remainder fail since they were (a) not fourth section proceedings;¹² or (b) general investigation proceedings under §15(7) of the Act where the lawfulness of the rates are in issue;¹³ or (c) cases in which the relief

¹⁰ Board of Trade J.S., p. 13, App. F; Mechling J.S., p. 20.

¹¹ *Iron and Steel to Minnesota*, 231 I.C.C. 425, 428 (1939); *Bituminous Coal to Buffalo, N. Y.*, 219 I.C.C. 554, 560 (1936).

¹² *City of Spokane v. Northern Pacific Ry. Co.*, 21 I.C.C. 400, 426, (1911).

¹³ *Crude Barytes Ore from Missouri to Corpus Christi and Houston*, 299 I.C.C. 505, 508 (1956); *Passenger Fares, Hell Gate Bridge Route, New York N.Y.*, 296 I.C.C. 147, 153 (1955); *Iron and Steel from Minnequa to Kansas, Nebraska and South Dakota*, 278 I.C.C. 163, 168-169 (1950).

sought was granted;¹⁴ or (d) where a "special case" was found not to exist since discrimination would result at intermediate points;¹⁵ or (e) where the rates were found to be noncompensatory.¹⁶ The Commission's policy and practice was stated by the entire Commission in *Mississippi Railroad Commission v. Alabama & V. Ry. supra*, (1937) as follows:

" . . . It is desirable in the interests of economy of time and expense, wherever practicable, to hear and dispose of fourth-section applications in connection with formal complaints or investigations involving the same rate under other sections of the Act. . . . So far as practicable it will be adhered to in the future"

Moreover, the Commission's practice not to make final determination under the other sections of the Act has been stated in all fourth section orders issued since *Intermountain Rate Cases, supra*, in 1914.

The Board of Trade's assertion that "the effect which the results of the decision will have upon an important segment of the grain-rate structure, of itself, makes this a case of general public importance" and its suggestion

¹⁴ *Intermountain Rate Cases*, 234 U.S. 476 (1914); *Nepheline Syenite from Ontario, Canada, to the East*, 308 I.C.C. 561, 564-565 (1959); *Coal and Coal Briquets in the South*, 289 I.C.C. 341, 376-377 (1953); *Lumber from the South and Southwest*, 245 I.C.C. 67, 73-74 (1941); *Commodity Rates on Lumber and Other Forest Products, in Carloads, From South Pacific Coast Territory to Points in Central Freight Association Territory*, 165 I.C.C. 561, 569 (1930); *Differential Routes to Central Territory*, 211 I.C.C. 403, 421 (1935); *Railroad Commission of Nevada v. S.P. Co.*, 21 I.C.C. 329, 338-339 (1911)

¹⁵ *Sand and Gravel to Northfield and Evanston, Ill.*, 234 I.C.C. 65 (1939); *Pig Iron to Butler, Pa.*, 222 I.C.C. 1 (1937).

¹⁶ *Transcontinental Cases of 1922*, 74 I.C.C. 48 (1922).

that the Kankakee combinations have precipitated other grain rate adjustments which are now before the Commission (J.S., pp. 18-19) are irrelevant to the questions presented. The Commission has and exercises its ample powers to require and preserve a reasonable and lawful rate structure. *New York v. United States*, 331 U.S. 284 (1947); *Ayrshire Collieries Corp. v. United States*, 335 U.S. 573 (1948). The four pending proceedings referred to by the Board of Trade are investigations instituted by the Commission pursuant to section 15(7) of the Act in which all questions as to the lawfulness of the rates there involved will be determined. While in this case the Commission did not institute a general investigation under section 15(7) into the lawfulness of the proportional factor to Kankakee as requested by appellants, the Commission advised that the rates could be made subject to investigation on complaint under section 13(1) of the Act. Appellants could have filed a complaint in 1957 when the proceeding commenced; in 1960 when the order being assailed was entered; and may still file a complaint. The question of law presented is narrow and technical and of no practical importance in respect to the rate structure. As a matter of administrative procedure it has already been decided by this Court.

(3) The Commission's report is replete with discussion of the contention of the parties and an analysis of the evidence and findings. These findings fully meet the requirements of Section 4. The Court below found that the order is supported by findings and conclusions based on substantial evidence. Thus Mechling's question 5 (J.S., p. 4) is unsubstantial.

CONCLUSION.

These appeals present no substantial issue warranting plenary consideration and the judgment of the Court below should be affirmed.

Respectfully submitted,

RICHARD J. MURPHY

1225 LaSalle Street Station

Chicago 5, Illinois

*Attorney for The New York Central
Railroad Company, Appellee*

Dated: March 5, 1963.

PROOF OF SERVICE

I, RICHARD J. MURPHY, Attorney for Appellee, The New York Central Railroad Company, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of March, 1963, I served copies of the foregoing Motion to Affirm of the Appellee railroad on the several parties by mailing copies thereof in duly addressed envelopes, with postage prepaid, as follows:

1. On the Appellant, Board of Trade of the City of Chicago, copies to its attorneys Harold E. Spencer, Esq., and Richard M. Freeman, Esq., One North LaSalle Street, Chicago 2, Illinois.

2. On the Plaintiffs-Appellants, A. L. Mechling Barge Lines, Inc., Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company,

and Mazon Farmers Elevator, copies to their attorneys Edward B. Hayes, Esq., and Wilbur S. Legg, Esq., 135 South LaSalle Street, Chicago 3, Illinois.

3. On the Appellee, United States of America, copies to the Honorable Archibald Cox, Solicitor General of the United States, Department of Justice, Washington 25, D.C., and to James P. O'Brien, Esq., United States Attorney for the Northern District of Illinois, Room 450 United States Court House, Chicago, Illinois.

4. On Appellee Interstate Commerce Commission, copies to Robert W. Ginnane, Esq., its General Counsel and H. Neil Garson, Esq., its Associate General Counsel, Washington 25, D.C.

5. On Appellees, Farmers Cooperative Elevator Company, Federal North Iowa Grain Company, Milla Grain & Supply Company, Union Hill Farmers Elevator, Neilsen Grain Company, Ferris Grain Company, Frank Gibbons Grain Company, Cahill Grain Company, Diemer Grain Company, Priscilla Grain Company, McNabb Grain Company, Missal Farmers Grain Company, Payne-Stotler Grain Company, Lostant Grain Company and Isaac Barrett Grain Company, and copies to their attorney, Leo P. Fay, Esq., 6202 South Campbell Avenue, Chicago, Illinois.

RICHARD J. MURPHY

APPENDICES

APPENDIX A.

**INTERSTATE COMMERCE COMMISSION
WASHINGTON**

October 16, 1957

NOTICE OF HEARING

**FOURTH SECTION APPLICATION NO. 33955
CORN AND CORN PRODUCTS, ILLINOIS TO
OFFICIAL TERRITORY**

The above numbered application filed by Agent O. E. Schultz, which seeks authority to establish and maintain rates on corn, and corn products, carloads, from specified points in central territory to specified points in official territory, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, is hereby assigned for hearing on December 4, 1957, at 9:30 A. M., United States Standard Time, at the U. S. Customs House, 610 South Canal Street, Chicago, Ill., before Examiner Walter L. Baumgartner.

By the Commission.

HAROLD D. MCCOY,
Secretary.

APPENDIX B.

Susp.—12352
August 26, 1957

NOTICE

Petitions have been filed with the Commission requesting suspension of a proportional rate on corn and corn products, carloads, minimum weight 100,000 pounds. Such proposed rate to be applicable from seventeen origins in Illinois to Kankakee, Ill., for application on through traffic to points in Central Territory, as set forth in Supplement 126 to New York Central Railroad Company tariff I.C.C. 1169 to become effective August 29, 1957.

Upon consideration of the matters involved, the Commission, Board of Suspension, today concluded not to suspend the operation of this schedule.

No action has as yet been taken as to Fourth Section application No. 33955.

This action does not constitute approval of the protested schedules. They may be made subject to investigation through formal complaint filed in accordance with the Commission's Rules of Practice.

ROBERT J. TEST
Acting Secretary

Fourth Section Order No. 18784

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Fourth Section Board, held at its offices in Washington, D. C. on the 27th day of August, A. D., 1957.

CORN AND CORN PRODUCTS, ILLINOIS
TO OFFICIAL TERRITORY

By fourth-section application No. 33955 as amended, O. E. Schultz, agent, for and on behalf of carriers parties to Agent H. R. Hinsch's tariffs I.C.C. 4403 and 4499 and The New York Central Railroad Company's tariff I.C.C. 1169, applies for authority to establish and maintain the rates hereinafter described without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act. An investigation of the matters and things involved in the application having been made, which application as amended is hereby referred to and made a part hereof:

It is ordered, That applicants in No. 33955 as amended, be, and they are hereby, authorized to establish and maintain over their proposed routes for the transportation of corn and corn products, in carloads, as more fully described in the application, from points in Illinois on The New York Central Railroad Company, Van's Siding to Moronts, inclusive, to points in central, trunk-line and New England territories, rates constructed on the basis described in the application, as proposed therein, and to maintain higher rates from and to intermediate points; *Provided*, That rates from and to such higher-rated intermediate points shall not be increased except as may be authorized by this Commission, nor exceed the lowest combination of rates subject to the Interstate Commerce Act.

App. 4.

And it is further ordered, That the relief herein authorized shall continue until the effective date of the further order to be entered after hearing in fourth-section application No. 33955 as amended

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation and correction if in conflict with any provision of the Interstate Commerce Act.

By the Commission, Fourth Section Board.

HAROLD D. MCCOY,
Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Susp.—12352

August 27, 1957

NOTICE

Division 2, acting as an appellate division, voted today not to suspend protested schedules naming a proportional rate on corn and corn products, carloads, minimum weight 100,000 pounds, applicable from seventeen origins in Illinois to Kankakee, Ill., for application on through traffic to points in Central Territory, as set forth in Supplement 126 to New York Central Railroad Company tariff I.C.C. 1169 to become effective August 29, 1957.

The Board of Suspension had concluded not to suspend the protested schedules and the action of Division 2 followed the filing of an appeal for reconsideration of the Board's action. The action of the Board of Suspension and of Division 2 does not constitute approval of the protested schedules.

ROBERT J. TEST,
Acting Secretary.

INTERSTATE COMMERCE COMMISSION
Washington, D.C.

F.S.A. No. 33955

August 28, 1957

NOTICE

Division 2, acting as an appellate division, voted today to sustain the action of the Fourth Section Board in granting relief from the long-and-short-haul provision of section 4 of the Interstate Commerce Act in connection with rates on corn and corn products, carloads, from origins in Illinois on The New York Central Railroad Company to points in central, trunkline and New England territories.

The action of Division 2 followed the filing of appeals for reconsideration of the action of the Fourth Section Board. The action of the Fourth Section Board and of Division 2 does not constitute approval of the rates. They may be subject to an investigation through formal complaint filed in accordance with the Commission's Rules of Practice.

ROBERT J. TEST
Acting Secretary